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Nos. 639, 640

In the Supreme Court of the United States

OCTOBER TERM, 1935

J. EDWARD JONES, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the District Court (No. 640, R. 154–164) is reported in 12 F. Supp. 210 and the opinion of the Circuit Court of Appeals (No. 639, R. 185–191; No. 640, R. 179–185) is reported in 79 F. (2d) 617.

JURISDICTION

The decrees sought to be reviewed were entered November 12, 1935 (No. 639, R. 191; No. 640, R. 185–186). A petition for rehearing was filed with the Circuit Court of Appeals November 18, 1935,

and was denied by that court November 21, 1935 (No. 639, R. 192–193; No. 640, R. 186–187). Petitioners invoke the jurisdiction of this Court under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

IN NO. 639

1. Whether the interlocutory rulings of the Commission denying the motions of Jones to withdraw his registration statement were reviewable by the Circuit Court of Appeals.

IN NO. 640

2. Whether Jones had a right to withdraw his registration statement.

3. Whether the Securities Act of 1933 authorized the Commission to apply for an order directing Jones to testify concerning his registration statement.

4. Whether the registration requirements of the Securities Act of 1933 are a valid exercise of the powers granted to Congress by the United States Constitution.

STATUTE AND REGULATION INVOLVED

A copy of the Securities Act of 1933, together with the amendments, is attached hereto, and the only regulation of the Commission involved herein is set forth in the Appendix.

STATEMENT

J. Edward Jones, the petitioner, on May 4, 1935, filed a registration statement with the Securities and Exchange Commission on the Commission's Form C–1, pursuant to Section 6 of the Securities Act of 1933, Act of May 27, 1933, c. 38, 48 Stat. 78 (U. S. C., Title 15, Sec. 77 (f)). The registration statement, which is reprinted in full in both records (No. 639, R. 9–89; No. 640, R. 52–132) covered an issue of "Participation Trust Certificates in Producing Oil Royalties", known as "J. Edward Jones Royalty Trust, Series M."

It appeared to the Commission that this registration statement included untrue statements of material facts required to be stated therein and omitted to state material facts necessary to make the statements therein not misleading. The Commission therefore on May 20, 1935, directed that stop-order proceedings be instituted (No. 639, R. 109). Notice was sent to Jones by telegram on May 23rd (No. 639, R. 90–91; No. 640, R. 133–134), and confirmed by letter on May 24th (No. 640, R. 19, 33), that a hearing would be held on June 6th, at which time he might appear and show cause why a stop order should not be issued by the Commission suspending the effectiveness of the registration statement (No. 639, R. 90–91; No. 640, R. 133–134). By agreement of counsel, the hearing was postponed to June 18, 1935 (No. 639, R. 112, 166–167).

Pending this hearing, Jones's registration statement became effective by operation of law on May 24th,[1] twenty days after the date of filing, pursuant to the provisions of Section 8 (a) of the Act of May 27, 1933, c. 38, 48 Stat. 79 (U. S. C., Title 15, Sec. 77 (h)). On June 13th George C. Mathews, a Commissioner of the Securities and Exchange Commission, issued a subpena duces tecum directing Jones to appear on June 18th before an officer of the Commission designated to conduct the hearing and to bring with him certain papers (No. 639, R. 91–92; No. 640, R. 134–135). Jones failed to appear at the hearing on June 18th, although his counsel appeared and stipulated that Jones had received the subpena (No. 639, R. 117).

At this examination and hearing held on June 18th, counsel for Jones attempted to withdraw the registration statement by making an oral statement at the hearing (No. 639, R. 121) and by filing a statement written by Jones (No. 639, R. 117–119, 176–179). Permission to withdraw the registration statement was refused by the officer conducting the hearing (No. 639, R. 122) and by an appropriate minute of the Commission (No. 639, R. 180).

After taking some testimony, the officer conducting the hearing adjourned it until June 27th (No.

[1] The implication in Jones' Petition for Writs of Certiorari, p. 2, that an order to show cause why there should not be issued a stop order suspending the effectiveness of a registration statement, *ipso facto* prevents the statement becoming effective, is manifestly erroneous.

639, R. 151). On June 16th this officer, pursuant to the power granted him by an order of the Commission (No. 639, R. 113–114; No. 640, R. 19–21), issued a subpena directing Jones to appear before said officer on June 27th to testify regarding his registration statement (No. 639, R. 99; No. 640, R. 142). This subpena was duly and personally served upon Jones by a United States Marshal on June 20, 1935, in the City of New York (No. 639, R. 176), and the service was admitted by Jones (No. 639, R. 152; No. 640, R. 34). Jones again failed to appear at the adjourned hearing on June 27th and, through his counsel appearing specially, refused to obey the subpena (No. 639, R. 152).

At the same hearing, counsel for Jones presented successively a dismissal of the registration statement (No. 639, R. 100–101; No. 640, R. 143–144), a motion to dismiss the registration statement (No. 639, R. 101–103; No. 640, R. 144–146), a motion to quash the subpena served upon Jones (No. 639, R. 103–105; No. 640, R. 146–148), and an objection to jurisdiction (No. 639, R. 105–108; No. 640, R. 148–151). All of the motions were denied, and the objection to jurisdiction was overruled by the officer conducting the hearing (No. 639, R. 157, 158, 162) and by appropriate minutes of the Commission (No. 639, R. 180–181).

In making these several rulings on June 27th, and in refusing Jones permission to withdraw his registration statement on June 18th, the Commission and the officer conducting the hearing acted

under authority of a regulation of the Commission which was published in Release No. 47 on September 22, 1933. The pertinent part of the regulation (No. 639, R. 92–98; No. 640, R. 135–141) provided:

> Any registration statement or any amendment thereto may be withdrawn upon the request of the registrant if the Commission consents thereto * * *. Such consent shall be given by the Commission with due regard to the public interest and the protection of investors.

On June 28, 1935, Jones filed in the Circuit Court of Appeals for the Second Circuit a petition for review of the action of the Commission in refusing to permit the withdrawal of the registration statement, in denying the several motions presented at the hearing, and in overruling the objection to jurisdiction (No. 639, R. 2–8). The Circuit Court of Appeals entered a decree dismissing the petition for review (No. 639, R. 191) on the ground that it had no jurisdiction under Section 9 of the Securities Act of 1933, Act of May 27, 1933, c. 38, 48 Stat. 80 (U. S. C., Title 15, Sec. 77 (i): first, because no order was entered (No. 639, R. 186–187, f. 188) by the Commission, and, second, because, the proceedings before the Commission having "reflected no injury upon" (No. 639, R. 187, f. 188) Jones, he was not a "person aggrieved." This decree of the Circuit Court of Appeals is the one sought to be reviewed by the petition for a writ of certiorari in No. 639.

Between the time Jones filed his petition for review and the time the Circuit Court of Appeals dismissed this petition, the Commission (not having been stayed by any order pursuant to Section 9 (b) of the Securities Act of 1933) filed in the District Court of the United States for the Southern District of New York an application pursuant to Section 22 (b) of the Securities Act. This application (No. 640, R. 3–24) sought an order of the District Court directing Jones to appear before the Commission, or one of its examiners designated by it, "to testify in the matter of the registration statement of J. Edward Jones and to give answer to any and all pertinent questions regarding the information and documents heretofore filed by the respondent [Jones] with the Commission upon the said registration statement" (No. 640, R. 22–23).

In response to a rule to show cause why this application should not be granted (No. 640, R. 25–26), Jones appeared and filed an answer (No. 640, R. 26–44).

After hearing argument and considering briefs, the District Court on August 12, 1935, rendered an opinion (No. 640, R. 154–164) holding that the Commission was authorized under the Securities Act of 1933, as amended, and under the regulation published in Release No. 47, to continue the proceedings in which Jones had been summoned to testify and to deny Jones's motions to dismiss his registration statement; and further holding that the

provisions of the Securities Act were a valid exercise of the powers of Congress over "commerce with foreign nations and among the several states" and over "post offices and post roads." Accordingly, on August 23, 1935, the District Court issued an order granting the Commission's application, quoted *supra* (No. 640, R. 152–153).

From this order Jones appealed to the Circuit Court of Appeals for the Second Circuit (No. 640, R. 165–166). That court consolidated only for the purpose of argument this appeal and the original proceedings on the petition for review, already described; and rendered an opinion (No. 639, R. 184–191; No. 640, R. 179–185) holding that the Securities Act of 1933 and the regulation published in Release No. 47 authorized the Commission to continue its proceedings and issue a subpena in aid thereof, and that the registration requirements of the Act were a valid exercise of the power of Congress "to establish post offices and post roads." The opinion did not discuss the question whether the registration provisions of the Securities Act of 1933 could also be sustained under the commerce clause.

In conformity with its opinion, the Circuit Court of Appeals entered a decree affirming the order of the District Court directing Jones to appear before the Commission and testify [2] (No. 640, R. 185–

[2] By agreement of counsel, execution of this order was stayed until final disposition of the cause by this Court.

186). This decree is the one sought to be reviewed by the petition for a writ of certiorari in No. 640.

ARGUMENT

It is submitted that the decision below is correct, that it is not in conflict with decisions of other Circuit Courts of Appeal, and that it is not in conflict, but in conformity, with applicable decisions of this Court.

However, the question of the power of Congress to enact the registration requirements of the Securities Act is novel and of obvious public importance. The same cannot be said of the other questions sought to be presented. The only question raised in No. 639, and the first two questions presented in No. 640 (numbered 2 and 3) relate to minor procedural matters, as to which lower courts have entertained no doubt.

Although we do not oppose the granting of a writ in either No. 639 or No. 640, we respectfully submit the following analysis of the four issues in the two cases, for the purpose of aiding the Court in determining whether one or both writs of certiorari should be granted, and whether, if they be granted, the writs should be limited to the fundamental question of the power of Congress to enact the registration provisions of the Securities Act of 1933.

1. In No. 639, the lower court was clearly correct in deciding that the Commission's interlocu-

tory rulings denying Jones's motions to withdraw his registration statement were not reviewable in the Circuit Court of Appeals under Section 9 (a) of the Securities Act of 1933, Act of May 27, 1933, ch. 38, 48 Stat. 80 (U. S. C., Title 15, Sec. 77 (i) (a)). The pertinent part of this section provides that "Any person *aggrieved* by an *order* of the Commission may obtain a review of such order."

An examination of the Securities Act clearly indicates that the word "order" as used in the above-quoted sentence means a final order and not a mere interlocutory ruling as to a preliminary procedural matter. The only orders which the Securities Act authorizes the Commission to enter are those relating to the effectiveness of registration statements. Section 8 (b), (d), and (e) of the Securities Act of 1933, Act of May 27, 1933, c. 38, 48 Stat. 79 (U. S. C., Title 15, Sec. 77 (h)). These orders may be entered only after notice and hearing, and obviously require final determinations of fact by the Commission. Only such orders—authorized by the sections immediately preceding Section 9 (a)—are reviewable under Section 9 (a).

The interpretation which we urge has been given to similar statutes providing for review of orders of the Interstate Commerce Commission, *United States* v. *Illinois Central Railroad Co.*, 244 U. S. 82, 89; *United States* v. *Los Angeles Railroad*, 273 U. S. 299, 309–310; and of orders of the Federal Trade Commission, *Chamber of Commerce of Min-*

neapolis v. *Federal Trade Commission*, 280 Fed. 45 (C. C. A. 8th); *Nulomoline Co.* v. *Federal Trade Commission*, 254 Fed. 988 (C. C. A. 2d). And this is consistent with the ordinary limitation of the appellate jurisdiction of the Circuit Courts of Appeal to final orders of the District Courts. Section 128 of the Judicial Code, (U. S. C., Title 28, Sec. 225); *McLish* v. *Roff*, 141 U. S. 661.

Any other interpretation would have disastrous practical consequences. It would leave the door open for a recalcitrant or dilatory party to present successive petitions to the Circuit Courts of Appeal to review every minor procedural ruling of the Commission, thus indefinitely prolonging the final determination of a proceeding, and defeating the ends which Congress had in view in setting up machinery for expeditious administrative determinations.

Moreover, even if interlocutory rulings in general were reviewable in the Circuit Court of Appeals, Jones has no status to appeal from this interlocutory ruling. He is not, in the words of the statute, a "person aggrieved", as he has suffered no pecuniary or other damage by the Commission's refusal to let him withdraw his registration statement. Until the Commission makes the registration statement ineffective by the issuance of a stop order, Jones cannot be aggrieved or suffer. Cf. *Federal Trade Commission* v. *Claire Furnace Co.*, 274 U. S. 160, 174.

We therefore submit that the issue raised in No. 639 involves a purely procedural question of the right to review interlocutory rulings of the Commission, a question solely of the interpretation of Section 9 (a) of the Securities Act. The issue of the constitutionality of the Act is in no way involved in No. 639. In view of these factors, and of the manifest correctness of the decision below, and of the lack of conflict of such decision with applicable precedents, it is suggested that the writ might well be denied in No. 639, even though a writ be granted to review some of the questions presented in No. 640.

2. The ruling of the Commission refusing Jones's request to withdraw his registration statement (No. 639, R. 180–181) has been attacked by Jones on several different grounds, but none of them seems tenable, or the subject of conflict in the lower courts, or sufficiently important to justify review by this Court.

The right to withdraw a registration statement is not expressed or implied anywhere in the Act itself. A regulation of the Commission, published in Release No. 47, however, provides that consent to a withdrawal "shall be given by the Commission with due regard to the public interest and the protection of investors." Jones first contends that the regulation itself is invalid because it is an example of legislative action by an agency in the executive branch of the Government. But as a regulation "governing registration statements" it is

specifically authorized by Section 19 (a) of the Securities Act of 1933, Act of May 27, 1933, c. 38, 48 Stat. 85 (U. S. C., Title 15, Sec. 77 (s)). And Congress can delegate to the Commission this power to regulate the minutiae of procedure regarding registration statements. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *United States* v. *Janowitz*, 257 U. S. 42; *Avent* v. *United States*, 266 U. S. 127. Nor were any findings by the Commission a necessary prerequisite to promulgation of this regulation "because the regulation authorized was general legislation, not an administrative order in the nature of a judgment directed against an individual concern." *Pacific States Box & Basket Co.* v. *White*, Oct. Term, 1935, No. 48, p. 7.

It is next contended that the regulation deprives Jones of his liberty and property without due process of law. We know of no authority for the proposition that one who has filed a registration statement or similar application has an unconditional right to withdraw it, particularly *after it has become effective*, and after inquiry to determine its truthfulness has begun. The registration statement twenty days after it had been filed became a document on which rights and liabilities have been or may be based. Cf. Act of May 27, 1933, c. 38, Sections 5, 11, 12, 24; 48 Stat. 77, 82, 84, 87 (U. S. C., Title 15, Sec. 77 (e) (k) (l) (x)). Even if it were not such a document, and only the equivalent of a pleading in a proceeding

before the Commission, a rule that forbade its withdrawal without the consent of the Commission would be reasonable. *Young* v. *Southern Pacific Co.*, 25 F. (2d) 630 (C. C. A. 2d); *In re J. R. Palmenberg Sons*, 76 F. (2d) 935 (C. C. A. 2d). Withdrawal without the Commission's consent might prevent the issuance of findings sufficiently detailed to warn the public precisely of the fraudulent nature of a security; and might subject the Commission to the administrative impediment ~~to~~ receiving many and varied applications from the same issuer with respect to the same security without ever being able finally to act upon such applications.

A further point urged is that the regulation has not been published as required by Section 19 (a) of the Act of May 27, 1933, c. 38, 48 Stat. 85 (U. S. C., Title 15, Sec. 77 (s) (a)). The section referred to merely provides that—

> the rules and regulations of the Commission shall be effective upon publication in the manner in which the Commission shall prescribe.

Both the Federal Trade Commission, which administered the Securities Act when the regulation in question was published, and the Securities and Exchange Commission, which has administered the Act since September 1, 1934, have prescribed that all the principal newspapers shall be given all regulations immediately upon promulgation, and that *any* person may have his name placed upon the mailing list to receive free of charge regulations

as they are issued or compiled in booklets. This practice has been consistently followed by both Commissions, as appears from the affidavits appended hereto, which were also submitted to the lower courts. Moreover, any defect in the original publication of this regulation has been remedied by Section 210 of Title II of the Securities Exchange Act of 1934, Act of June 6, 1934, c. 404, 48 Stat. 908 (U. S. C., Title 15, Sec. 78 (ii)), which specifically continued in effect all regulations issued by the Federal Trade Commission.

Furthermore, Jones would not benefit if he could prove that the regulation was invalid. He would then be thrown back on the statute itself. And the statute, as already pointed out, neither explicitly nor implicitly gives a person a right to withdraw a registration statement that he has filed.

Finally, Jones contends that, even though generally valid, the regulation was not validly applied against him. He points out that the Commission made no specific findings on which to base its refusal to allow him to withdraw his registration statement. The rule itself does not purport to require such findings for a denial of a request to withdraw a registration statement. Moreover, there is no general principle that a finding of fact is required for interlocutory procedural rulings, particularly those which, instead of embodying an affirmative command, merely take the negative form of denying a request, which was itself absolute and without statement of reasons.

3. Jones has also urged that even if the proceedings pending before the Commission have not been terminated by his effort to withdraw his registration statement, the Securities Act of 1933 did not authorize the Commission to apply to the District Court for an order directing him to testify (Petition, pp. 13–14). (See also No. 640, R. 168, Assignments of Error 7–10.)

This argument first assumes that the power of the Commission to require testimony in the proceedings was derived exclusively from Section 8 of the Act of May 27, 1933, c. 38, 48 Stat. 79 (U. S. C., Title 15, Sec. 77 (h)); and next assumes that this section provides only for voluntary testimony and for subpenas duces tecum, but not also for subpenas ad testificandum. It is submitted that neither assumption is sound.

If the Commission had been proceeding exclusively under Section 8, subpenas ad testificandum would be authorized. Section 8 (d) is implemented by Section 8 (e), which provides:

> The Commission is hereby empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine the issuer, underwriter, or any other person, in respect of any matter relevant to the exam-

> ination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

It is unreasonable to interpret this section as sanctioning the more burdensome subpenas duces tecum, but not the less onerous subpenas ad testificandum. Cf. *Brownson* v. *United States,* 32 F. (2d) 844 (C. C. A. 8th). And indeed from the later section of the Securities Act, which lays down the procedure to be followed in case of contumacy or refusal to obey subpenas, Act of May 27, 1933, c. 38, Sec. 22 (b), 48 Stat. 86 (U. S. C., Title 15, Sec. 77 (v) (b)), it is clear that "examiners" (that is, the persons who in stop order proceedings are by Section 8 (c) "empowered to make an examination") were regarded by Congress as having power to issue subpenas ad testificandum.

Even if, as a matter of precedent and specific statutory interpretation, the power to compel testimony were doubtful, it must be implied as a necessary adjunct to the quasi-judicial functions exercised by the Commission in stop order proceedings. The elaborate machinery set up in Section 9 for judicial review of the Commission's orders presupposes the power of the Commission to pre-

pare a complete record, including all available evidence and not limited to the testimony of voluntary witnesses. In particular, the fact that a circuit court of appeals may remand a case to the Commission to take additional testimony only if the court is shown that the parties had reason for not adducing such testimony at the original proceeding necessarily assumes that such testimony could have been compelled at the original proceeding.

Furthermore, the proceedings before the Commission seem to have been directed not only at a potential stop order under Section 8, but also at an investigation under Section 19 (b) (No. 640, R. 63, 71, 19–21). The investigation of a person alleged to have filed a false or misleading registration statement is clearly an appropriate method for enforcement of the Act, since it may disclose willful violations punishable under Section 24, 48 Stat. 87 (U. S. C., Title 15, Sec. 77 (x)). And Section 19 (b) expressly empowers the officers of the Commission to subpoena witnesses in aid of investigations.

4. The remaining question is whether the registration requirements of the Securities Act of 1933 are a valid exercise of the powers granted to Congress by the United States Constitution. This constitutional issue is not raised in No. 639. It is, however, to be presented in No. 640, if the power to subpena Jones to testify regarding his registration statement depends upon the validity of the registration requirements of the Securities Act. More-

over, the validity of the registration requirements is a novel question of federal law which if it is raised in No. 640 is of sufficient general importance to justify the granting, in that case, of a writ of certiorari limited solely to this constitutional issue. Although not opposing the petition for certiorari on this question, we submit the following brief statement for the purpose of clarifying the issue and illustrating the conformity of the decision below with applicable decisions of this Court.

Unless a registration statement is in effect as to a security, Section 5 of the Securities Act makes it unlawful to use the mails or instruments of interstate commerce to offer, sell, or deliver securities. This section does not impinge upon "the minutest details of the business and affairs of men who issue, purchase, and sell securities" (Petitioner's Brief, p. 15). On the contrary, its incidence is only upon the use of the mails and of instruments of interstate commerce. Since the Act is inapplicable in other circumstances, no question is here presented as to whether the statute encroaches upon the powers of the several states to regulate intrastate business.

Jones does not challenge the settled doctrine that Congress may, in exercise of the power "to establish post offices and post roads", provide for the regulation of the use of the mails, and for the punishment of such use in furtherance of a scheme which it deems contrary to public welfare. *Ex parte Jackson,* 96 U. S. 727; *Ex parte Rapier,* 143

U. S. 110; *Public Clearing House* v. *Coyne,* 194 U. S. 497; *Badders* v. *United States,* 240 U. S. 391; *Milwaukee Publishing Co.* v. *Burleson,* 255 U. S. 407; *Leach* v. *Carlile,* 258 U. S. 138.

The decisions of this Court upholding state blue-sky laws establish that the particular type of regulation involved in the registration requirements does not violate due process of law, since it is reasonably necessary for and adapted to the prevention of fraud in the sale of securities. *Caldwell* v. *Sioux Falls Stock Yards Co.,* 242 U. S. 559; *Merrick* v. *Halsey, Stuart & Co.,* 242 U. S. 568; cf. *Hall* v. *Geiger-Jones Co.,* 242 U. S. 539.

The power of Congress over interstate commerce extends to regulation of traffic in securities. Securities are certificates of title that may be, and customarily are, traded in and possess values independent of equities between the transferor and the transferee. In the ordinary usage of business, they are articles of commerce, and they may properly be so treated by federal legislation. See *New York ex rel. Hatch* v. *Reardon,* 204 U. S. 152; cf. *The Lottery Case* (*Champion* v. *Ames*), 188 U. S. 321. The distinction is obvious between such articles and the insurance contracts which this Court has considered mere "indemnities" and "personal contracts." *New York Life Insurance Co.* v. *Deer Lodge County,* 231 U. S. 495, and cases therein collected.

As articles of commerce, securities in interstate traffic are subject to the power of Congress to regu-

late interstate commerce to prevent injury to those in the State of destination. *Brooks* v. *United States,* 267 U. S. 452; and cases therein collected; *McDermott* v. *Wisconsin,* 228 U. S. 115. As already pointed out, the registration requirements of the Act do not transcend the limitations of due process. *Caldwell* v. *Sioux Falls Stock Yards Co., supra; Merrick* v. *Halsey, Stuart & Co., supra; Hall* v. *Geiger-Jones Co., supra.*

Respectfully submitted.

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JANUARY 1936.

APPENDIX

In the District Court of the United States for the Southern District of New York

No. M17–191

SECURITIES AND EXCHANGE COMMISSION, APPLICANT

v.

J. EDWARD JONES, RESPONDENT

AFFIDAVIT OF OTIS B. JOHNSON ON BEHALF OF THE APPLICANT

UNITED STATES OF AMERICA,

District of Columbia, ss:

Otis B. Johnson, being duly sworn according to law, deposes and says:

1. That he is the Secretary of the Federal Trade Commission, having been appointed to that office on August 6, 1922;

2. That in such capacity he is in charge of all official records of the Federal Trade Commission, and had the duty of authenticating all regulations of said Commission under the Securities Act of 1933 from May 27, 1933, until September 4, 1934, and that he had the duty of publishing such regulations;

3. That the following regulation regarding withdrawal of registration statements was promulgated by the Federal Trade Commission on September 22,

1933, and was in full force and effect on September 4, 1934, when the administration of the Securities Act of 1933 was transferred from the Federal Trade Commission to the Securities and Exchange Commission, pursuant to Section 210 of Title II of the Securities Exchange Act of 1934:

> Any registration statement or any amendment thereto may be withdrawn upon the request of the registrant if the Commission consents thereto. The fee paid upon the filing of such registration statement shall not be returned to the registrant. The papers comprising the registration statement or amendment thereto shall not be removed from the files of the Commission but shall be plainly marked with date of the giving of such consent and in the following manner: "Withdrawn upon the Request of the Registrant, the Commission consenting thereto." Such consent shall be given by the Commission with due regard to the public interest and the protection of investors.

4. That the said regulation was available for public inspection in the public records of the Federal Trade Commission from the date of its promulgation on September 22, 1933, and that it was distributed free of charge to those newspapers and members of the public who were on the mailing list of the Federal Trade Commission or who requested copies of said regulation;

5. That on September 22, 1933, when the said regulation was promulgated and published, there were on the mailing list of the Federal Trade Commission approximately 450 newspaper correspondents which received all releases of the Federal Trade Commission, approximately 470 persons who received all releases of the Federal Trade Com-

mission, approximately 250 persons on a separate list to receive all releases of the Federal Trade Commission under the Securities Act of 1933, and approximately 100 persons on a separate list to receive all rules and regulations of the Federal Trade Commission under the Securities Act of 1933; that in addition to the foregoing list, copies of Release No. 47 containing the foregoing regulation were always kept available at the offices of the Federal Trade Commission for free public distribution.

(Sgd.) OTIS B. JOHNSON.

Subscribed and sworn to before me this 27th day of July 1935.

(Sgd.) EDNA B. VINCIL,
Notary Public, District of Columbia.

In the District Court of the United States for the Southern District of New York

No. M17-191

SECURITIES AND EXCHANGE COMMISSION, APPLICANT

v.

J. EDWARD JONES, RESPONDENT

AFFIDAVIT OF FRANCIS P. BRASSOR ON BEHALF OF THE APPLICANT

UNITED STATES OF AMERICA,
District of Columbia, ss:

Francis P. Brassor, being duly sworn according to law, deposes and says:

1. That he is the Secretary of the Securities and Exchange Commission, having been appointed to that office on August 24th, 1934;

2. That in such capacity he is in charge of all official records of the Securities and Exchange Commission, and has the duty of authenticating all regulations of said Commission under the Securities Act of 1933, and has the duty of publishing such regulations;

3. That the following regulation regarding withdrawal of registration statements, promulgated by the Federal Trade Commission on September 22, 1933, was in full force and effect on September 4, 1934, when the administration of the Securities Act of 1933 was transferred from the Federal Trade Commission to the Securities and Exchange Commission:

> Any registration statement or any amendment thereto may be withdrawn upon the request of the registrant if the Commission consents thereto. The fee paid upon the filing of such registration statement shall not be returned to the registrant. The papers comprising the registration statement or amendment thereto shall not be removed from the files of the Commission but shall be plainly marked with the date of the giving of such consent and in the following manner: "Withdrawn upon the Request of the Registrant, the Commission consenting thereto." Such consent shall be given by the Commissin with due regard to the public interest and the protection of investors.

4. That by virtue of Section 210 of Title II of the Securities Exchange Act of 1934, the said regulation was continued in effect until modified, superseded, revoked, or repealed; and that the said regulation has not been modified, superseded, revoked, or repealed by the Securities and Exchange Commission;

5. That the said regulation is included in the compiled regulations of the Securities and Exchange Commission under the Securities Act of 1933, and is distributed free of charge to any person requesting copies of said compiled regulations; more specifically, that the said regulation was published on page 11 of the revised compilation of regulations issued by the Securities and Exchange Commission and its predecessor, the Federal Trade Commission, under the Securities Act of 1933, which revised compilation was published on April 29, 1935, and was and is available for free distribution to any member of the public requesting the same;

6. That approximately 2,700 copies of the aforesaid revised compilation of regulations under the Securities Act of 1933, dated April 29, 1935, have been distributed to members of the public; that copies of said compilation are always kept available for distribution free of charge to any member of the public requesting the same;

7. That no record is available as to the number of persons who have received, by their special request, copies of Release No. 47, which contains the aforesaid regulation concerning the withdrawal of registration statements, but that copies of said release are always available at the office of the Securities and Exchange Commission for free public distribution;

8. That the present mailing list of the Securities and Exchange Commission, to which copies of regulations under the Securities Act of 1933 are sent when promulgated, approximate: 150 newspapers and periodicals, 950 persons who receive the full text of all rules and opinions under the Securities

Act of 1933, 1,000 persons who receive all releases of the Securities and Exchange Commission, and 1,700 persons who receive an abstract of the regulations under the Securities Act of 1933; that any member of the public requesting it may be placed on any of these lists free of charge.

(Sgd.) FRANCIS P. BRASSOR.

Subscribed and sworn to before me this 27th day of July 1935.

[SEAL] (Sgd.) MARGUERITE M. ALLISON,
Notary Public, District of Columbia.

My commission expires March 1, 1940.

[For Immediate Release, Friday, September 22, 1933]

FEDERAL TRADE COMMISSION

WASHINGTON

Securities Act of 1933 Release No. 47

The Federal Trade Commission announces adoption of a rule under the Securities Act * * * text of the new rules is as follows: * * *

WITHDRAWAL OF REGISTRATION STATEMENT OR AMENDMENT THERETO

Any registration statement or any amendment thereto may be withdrawn upon the request of the registrant if the Commission consents thereto. The fee paid upon the filing of such registration statement shall not be returned to the registrant. The papers comprising the registration statement or amendment thereto shall not be removed from the files of the Commission but shall be plainly marked with date of the giving of such consent and

in the following manner: "Withdrawn upon the Request of the Registrant, the Commission consenting thereto." Such consent shall be given by the Commission with due regard to the public interest and the protection of investors.

U. S. GOVERNMENT PRINTING OFFICE: 1936

SECURITIES ACT OF 1933

[PUBLIC—No. 22—73D CONGRESS]

[H.R. 5480]

AN ACT

To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SHORT TITLE

SECTION 1. This title may be cited as the "Securities Act of 1933".

DEFINITIONS

SEC. 2. When used in this title, unless the context otherwise requires—

(1) The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.[1]

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term "sale", "sell", "offer to sell", or "offer for sale" shall include every contract of sale or disposition of, attempt or offer

[1] The matter appearing in bold-face type with footnote references represents subsections and subparagraphs as amended. This and subsequent footnotes contain the text prior to amendment. Bold-faced type without footnote references indicates provisions added by amendment. The amendments, effective July 1, 1934, are contained in Title II of Securities Exchange Act of 1934, approved June 6, 1934.

(1) The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of interest in property, tangible or intangible, or, in general, any instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing."

to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value; except that such terms shall not include preliminary negotiations or agreements between an issuer and any underwriter. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be a sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.[a]

(5) The term "Commission" means the Federal Trade Commission.[b]

(6) The term "Territory" means Alaska, Hawaii, Puerto Rico, the Philippine Islands, Canal Zone, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto

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[a] "(4) The term 'issuer' means every person who issues or proposes to issue any security or who guarantees a security either as to principal or income; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term 'issuer' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term 'issuer' means the person by whom the equipment or property is or is to be used."

[b] See Secs. 27 and 28, infra, being Sections 210 and 212, Title II of Securities Exchange Act of 1934, providing for transfer to "Securities and Exchange Commission" of all powers, duties, and functions of the Federal Trade Commission.

among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum accompanying such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio, which offers any security for sale; except that (a) a communication shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of Section 10 was sent or given to the person to whom the communication was made, by the person making such communication or his principal, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of Section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, and state by whom orders will be executed.[5]

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Any security which, prior to or within sixty days after the enactment of this title, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to

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[5] "(10) The term 'prospectus' means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio, which offers any security for sale; except that (a) a communication shall not be deemed a prospectus if it is proved that prior to such communication a written prospectus meeting the requirements of section 10 was received, by the person to whom the communication was made, from the person making such communication or his principal, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, and state by whom orders will be executed."

any new offering of any such security by an issuer or underwriter subsequent to such sixty days;

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States, or any certificate of deposit for any of the foregoing, or any security issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve Bank;[4]

(3) Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a person[5] organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual;

(5) Any security issued by a building and loan association, homestead association, savings and loan association, or similar institution, substantially all the business of which is confined to the making of loans to members (but the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security), or any security issued by a farmers' cooperative association as defined in paragraphs (12), (13), and (14) of section 103 of the Revenue Act of 1932;

(6) Any security issued by a common carrier which is subject to the provisions of section 20a of the Interstate Commerce Act, as amended;

(7) Certificates issued by a receiver or by a trustee in bankruptcy, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the

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[4] "(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories exercising an essential governmental function, or by any corporation created and controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States, or by any national bank, or by any banking institution organized under the laws of any State or Territory, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; or any security issued by or representing an interest in or a direct obligation of a Federal reserve bank;"

[5] "Corporation."

Amendment to Section 3(a)(6) of the Securities Act of 1933, as amended.

The "Motor Carrier Act of 1935" (approved August 9, 1935), Section 214, amended Section 3(a)(6) of the Securities Act of 1933 to read as follows:

"(6) Any security issued by a common *or contract* carrier, *the issuance of* which is subject to the provisions of section 20a of the Interstate Commerce Act, as amended;"

The new law added is in italics.

supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;[6]

(10) Any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;[6]

(11) Any security which is a part of an issue sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory.[7]

(b) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $100,000.

EXEMPTED TRANSACTIONS

SEC. 4. The provisions of section 5 shall not apply to any of the following transactions:

(1) Transactions by any person other than an issuer, underwriter, or dealer; transactions by an issuer not involving any public offering; or transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except transactions within one year after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter (excluding in the computation of such year any time during which a stop order issued under section 8 is in effect as to the security), and except transactions as to securities constituting the

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[6] The first clause of the following former Sec. 4 (3) has been replaced by Sec. 3 (a) (9) and the second clause by Sec. 3 (a) (10): "(3) The issuance of a security of a person exchanged by it with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with such exchange; or the issuance of securities to the existing security holders or other existing creditors of a corporation in the process of a bona fide reorganization of such corporation under the supervision of any court, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors."

[7] The following former Sec. 5 (c) has been supplanted by Sec. 3 (a) (11): "(c) The provisions of this section relating to the use of the mails shall not apply to the sale of any security where the issue of which it is a part is sold only to persons resident within a single State or Territory, where the issuer of such securities is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory."

whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.[8]

(2) Brokers' transactions, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders.

PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILS

SEC. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security registered under this title, unless such prospectus meets the requirements of section 10; or

(2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of section 10.

REGISTRATION OF SECURITIES AND SIGNING OF REGISTRATION STATEMENT

SEC. 6. (a) Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by

[8] "(1) Transactions by any person other than an issuer, underwriter, or dealer; transactions by an issuer not with or through an underwriter and not involving any public offering; or transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except transactions within one year after the last date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter (excluding in the computation of such year any time during which a stop order issued under section 8 is in effect as to the security), and except transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter."

authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this title. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

(b) At the time of filing a registration statement the applicant shall pay to the Commission a fee of one one-hundredth of 1 per centum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall fee be less than $25.

(c) The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b).

(d) The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

(e) No registration statement may be filed within the first forty days following the enactment of this Act.

INFORMATION REQUIRED IN REGISTRATION STATEMENT

SEC. 7. The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement.

Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

TAKING EFFECT OF REGISTRATION STATEMENTS AND AMENDMENTS THERETO

SEC. 8 (a) The effective date of a registration statement shall be the twentieth day after the filing thereof, except as hereinafter provided, and except that in case of securities of any foreign public authority, which has continued the full service of its obligations in the United States, the proceeds of which are to be devoted to the refunding of obligations payable in the United States, the registration statement shall become effective seven days after the filing thereof. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

(b) If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.

(c) An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order the Commission shall so declare and thereupon the stop order shall cease to be effective.

(e) The Commission is hereby empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

(f) Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement.

COURT REVIEW OF ORDERS

SEC. 9. (a) Any person aggrieved by an order of the Commission may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the Court of Appeals of the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and

240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

INFORMATION REQUIRED IN PROSPECTUS

SEC. 10. (a) A prospectus—

(1) when relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the same statements made in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of Schedule A;

(2) when relating to a security issued by a foreign government or political subdivision thereof shall contain the same statements made in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of Schedule B.

(b) Notwithstanding the provisions of subsection (a)—

(1) When a prospectus is used more than thirteen months after the effective date of the registration statement, the information in the statements contained therein shall be as of a date not more than twelve months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense.*

(2) there may be omitted from any prospectus any of the statements required under such subsection (a) which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors.

(3) any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(4) in the exercise of its powers under paragraphs (2) and (3) of this subsection, the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate to such use and consistent with the public interest and the protection of investors.

(c) The statements or information required to be included in a prospectus by or under authority of subsection (a) or (b), when written, shall be placed in a conspicuous part of the prospectus in type as large as that used generally in the body of the prospectus.

(d) In any case where a prospectus consists of a radio broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by

* "(1) when a prospectus is used more than thirteen months after the effective date of the registration statement, the information in the statements contained therein shall be as of a date not more than twelve months prior to such use."

rules and regulations require the filing with it of forms and prospectuses used in connection with the sale of securities registered under this title.

CIVIL LIABILITIES ON ACCOUNT OF FALSE REGISTRATION STATEMENT

SEC. 11. (a) In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) every person who signed the registration statement;

(2) every person who was a director of (or person performing similar functions) or partner in, the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him.

(5) every underwriter with respect to such security.

If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

(b) Notwithstanding the provisions of subsection (a) no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof—

(1) that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or cease or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or

(2) that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1), and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or

(3) that (A) as regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and **(C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.**[10]

[10] "(C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had reasonable ground to believe and did believe, at the time such part of the registration statement became

(c) In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.[11]

(d) If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

(e) The suit authorized under subsection (a) may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: Provided, that if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable. In no event shall any underwriter (unless such underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interests in the underwriting) be liable in any suit or as a consequence of suits authorized under subsection (a) for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. In any suit under this or any other section of this title the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit,

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effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that such part of the registration statement fairly represented the statement of the expert or was a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true, and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that such part of the registration statement fairly represented the statement made by the official person or was a fair copy of or extract from the public official document."

[11] "(c) In determining for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable gound for belief, the standard of reasonableness shall be that required of a person occupying a fiduciary relationship."

such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.[12]

(f) All or any one or more of the persons specified in subsection (a) shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(g) In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.

CIVIL LIABILITIES ARISING IN CONNECTION WITH PROSPECTUSES AND COMMUNICATIONS

SEC. 12. Any person who—

(1) sells a security in violation of section 5, or

(2) sells a security (whether or not exempted by the provisions of section 3, other than paragraph (2) of subsection (a) thereof), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

LIMITATION OF ACTIONS

Sec. 13. No action shall be maintained to enforce any liability created under section 11 or section 12 (2) unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 12 (1), unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 11 or section 12 (1) more than three years after the security was bona fide offered to the public, or under section 12 (2) more than three years after the sale.[13]

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[12] "(e) The suit authorized under subsection (a) may be either (1) to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or (2) for damages if the person suing no longer owns the security."

[13] "SEC. 13. No action shall be maintained to enforce any liability created under section 11 or section 12 (2) unless brought within two years after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 12 (1), unless brought within two years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 11 or section 12 (1) more than ten years after the security was bona fide offered to the public."

CONTRARY STIPULATIONS VOID

SEC. 14. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission shall be void.

LIABILITY OF CONTROLLING PERSONS

SEC. 15. Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under section 11 or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

ADDITIONAL REMEDIES

SEC. 16. The rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

FRAUDULENT INTERSTATE TRANSACTIONS

SEC. 17. (a) It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) The exemptions provided in section 3 shall not apply to the provisions of this section.

STATE CONTROL OF SECURITIES

SEC. 18. Nothing in this title shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person.

SPECIAL POWERS OF COMMISSION

SEC. 19. (a) The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this title. Among other things, the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but insofar as they relate to any common carrier subject to the provisions of section 20 of the Interstate Commerce Act, as amended, the rules and regulations of the Commission with respect to accounts shall not be inconsistent with the requirements imposed by the Interstate Commerce Commission under authority of such section 20. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. **No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.**

(b) For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this title, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

INJUNCTIONS AND PROSECUTION OF OFFENSES

SEC. 20. (a) Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this title, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

(b) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed under authority thereof, it may in its discretion, bring an action in any district court of the United States, United States court of any Territory, or the Supreme Court of the District of Columbia to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this title. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

(c) Upon application of the Commission the district courts of the United States, the United States courts of any Territory, and the Supreme Court of the District of Columbia, shall also have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof.

HEARINGS BY COMMISSION

SEC. 21. All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

JURISDICTION OF OFFENSES AND SUITS

SEC. 22. (a) The district courts of the United States, the United States courts of any Territory, and the Supreme Court of the District of Columbia shall have jurisdiction of offenses and violations under this title and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this title. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judg-

ments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347). No case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against it in the Supreme Court or such other courts.

(b) In case of contumacy or refusal to obey a subpena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause, or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

UNLAWFUL REPRESENTATIONS

SEC. 23. Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing provisions of this section.

PENALTIES

SEC. 24. Any person who willfully violates any of the provisions of this title, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $5,000 or imprisoned no more than five years, or both.

JURISDICTION OF OTHER GOVERNMENT AGENCIES OVER SECURITIES

SEC. 25. Nothing in this title shall relieve any person from submitting to the respective supervisory units of the Government of the United States information, reports, or other documents that are now or may hereafter be required by any provision of law.

SEPARABILITY OF PROVISIONS

SEC. 26. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 27. Upon the expiration of sixty days after the date upon which a majority of the members of the securities and exchange commission appointed under Section 4 of Title I of this act have qualified and taken office, all powers, duties and functions of the Federal Trade Commission under the Secutities Act of 1933 shall be transferred to such commission, together with all property, books, records and unexpended balances of appropriations used by or available to the Federal Trade Commission for carrying out its functions under the Securities Act of 1933. All proceedings, hearings or investigations commenced or pending before the Federal Trade Commssion arising under the Securities Act of 1933 shall be continued by the Securities and Exchange Commission. All orders, rules and regulations which have been issued by the Federal Trade Commission under the Securities Act of 1933 and which are in effect shall continue in effect until modified, superseded, revoked, or repealed. All rights and interests accruing or to accrue under the Securities Act of 1933, or any provision of any regulation relating to, or out of action taken by, the Federal Trade Commission under such act, shall be followed in all respects and may be exercised and enforced.

Sec. 28. The commission is authorized and directed to make a study and investigation of the work, activities, personnel and functions of protective and reorganization committees in connection with the reorganization, readjustment, rehabilitation, liquidation, or consolidation of persons and properties and to report the result of its studies and investigations and its recommendations to the Congress on or before January 3, 1936.[14]

SCHEDULE A

(1) The name under which the issuer is doing or intends to do business;

(2) the name of the State or other sovereign power under which the issuer is organized;

(3) the location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice;

(4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, associa-

[14] Secs. 27 and 28 are Secs. 210 and 211, Title II, of Securities Exchange Act of 1934, approved June 6, 1934, effective July 1, 1934.

tion, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within two years prior to the filing of the registration statement;

(5) the names and addresses of the underwriters;

(6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 per centum of any class of stock of the issuer, or more than 10 per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement;

(7) the amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe;

(8) the general character of the business actually transacted or to be transacted by the issuer;

(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(10) a statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 per centum in the aggregate of such options;

(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year;

(15) the estimated net proceeds to be derived from the security to be offered;

(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(17) all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid the amount of such commission paid to each underwriter shall be stated;

(18) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

(19) the net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security;

(20) any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the names of the principal underwriters of such security;

(21) the names and addresses of the vendors and the purchase price of any property, or good will, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

(22) full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 per centum of any class of stock or more than 10 per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date;

(23) the names and addresses of counsel who have passed on the legality of the issue;

(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course

of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of $2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

(25) a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of $20,000 to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted;

(26) a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase

of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement;

(28) a copy of any agreement or agreements (or if identic agreements are used the forms thereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;

(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors;

(31) unless previously filed and registered under the provisions of this title, and brought up to date, (a) a copy of its articles of incorporation, with all amendments thereof and of its existing by-laws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization; and

(32) a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

SCHEDULE B

(1) Name of borrowing government or subdivision thereof;

(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(3) the amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(4) whether or not the issuer or its predecessor has, within a period of twenty years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any;

(5) the receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the two preceding fiscal years, year by year;

(6) the names and addresses of the underwriters;

(7) the name and address of its authorized agent, if any, in the United States;

(8) the estimated net proceeds to be derived from the sale in the United States of the security to be offered;

(9) the price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(10) all commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

(11) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commissions specified in paragraph (10) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges;

(12) the names and addresses of counsel who have passed upon the legality of the issue;

(13) a copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States; and

(14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.

TITLE II

SECTION 201. For the purpose of protecting, conserving, and advancing the interests of the holders of foreign securities in default, there is hereby created a body corporate with the name "Corporation of Foreign Security Holders" (herein called the "Corporation"). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors.

SEC. 202. The control and management of the Corporation shall be vested in a board of six directors, who shall be appointed and hold office in the following manner: As soon as practicable after the date this Act takes effect the Federal Trade Commission (hereinafter in this title called "Commission") shall appoint six directors, and shall designate a chairman and a vice chairman from among their number. After the directors designated as chairman and vice chairman cease to be directors, their successors as chairman and vice chairman shall be elected by the board of directors itself. Of the directors first appointed, two shall continue in office for a term of two years, two for a term of four years, and two for a term of six years, from the date this Act takes effect, the term of each to be designated by the Commission at the time of appointment. Their successors shall be appointed by the Commission, each for a term of six years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. No person shall be eligible to serve as a director who within the five years preceding has had any interest, direct or indirect, in any corporation, company, partnership, bank or association which has sold, or offered for sale any foreign securities. The office of a director shall be vacated if the board of directors shall at a meeting specially convened for that purpose by resolution passed by a majority of at least two-thirds of the board of directors, remove such member from office, provided that the member whom it is proposed to remove shall have seven days' notice sent to him of such meeting and that he may be heard.

SEC. 203. The Corporation shall have power to adopt, alter, and use a corporate seal; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; to require from trustees, financial agents, or dealers in foreign securities information relative to the original or present holders of foreign securities and such other information as may be required and to issue subpenas therefor; to take over the functions of any fiscal and paying agents of any foreign securities in default; to borrow money for the purposes of this title, and to pledge as collateral for such loans any securities deposited with the Corporation pursuant to this title; by and with the consent and approval of the Commission to select, employ, and fix the compensation of officers, directors, members of committees, employees, attorneys, and agents of the Corporation, without regard to the provi-

sions of other laws applicable to the employment and compensation of officers or employees of the United States; to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, bylaws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed, together with provisions for such committees and the functions thereof as the board of directors may deem necessary for facilitating its business under this title. The board of directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid.

SEC. 204. The board of directors may—

(1) Convene meetings of holders of foreign securities.

(2) Invite the deposit and undertake the custody of foreign securities which have defaulted in the payment either of principal or interest, and issue receipts or certificates in the place of securities so deposited.

(3) Appoint committees from the directors of the Corporation and/or all other persons to represent holders of any class or classes of foreign securities which have defaulted in the payment either of principal or interest and determine and regulate the functions of such committees. The chairman and vice chairman of the board of directors shall be ex officio chairman and vice chairman of each committee.

(4) Negotiate and carry out, or assist in negotiating and carrying out, arrangements for the resumption of payments due or in arrears in respect of any foreign securities in default or for rearranging the terms on which such securities may in future be held or for converting and exchanging the same for new securities or for any other object in relation thereto; and under this paragraph any plan or agreement made with respect to such securities shall be binding upon depositors, providing that the consent of holders resident in the United States of 60 per centum of the securities deposited with the Corporation shall be obtained.

(5) Undertake, superintend, or take part in the collection and application of funds derived from foreign securities which come into the possession of or under the control or management of the Corporation.

(6) Collect, preserve, publish, circulate, and render available in readily accessible form, when deemed essential or necessary, documents, statistics, reports, and information of all kinds in respect of foreign securities, including particularly records of foreign external securities in default and records of the progress made toward the payment of past-due obligations.

(7) Take such steps as it may deem expedient with the view of securing the adoption of clear and simple forms of foreign securities and just and sound principles in the conditions and terms thereof.

(8) Generally, act in the name and on behalf of the holders of foreign securities the care of representation of whose interests may be entrusted to the Corporation; conserve and protect the rights and interests of holders of foreign securities issued, sold, or owned in the United States; adopt measures for the protection, vindication, and

preservation or reservation of the rights and interests of holders of foreign securities either on any default in or on breach or contemplated breach of the conditions on which such foreign securities may have been issued, or otherwise; obtain for such holders such legal and other assistance and advice as the board of directors may deem expedient; and to do all such other things as are incident or conducive to the attainment of the above objects.

SEC. 205. The board of directors shall cause accounts to be kept of all matters relating to or connected with the transactions and business of the Corporation, and cause a general account and balance sheet of the Corporation to be made out in each year, and cause all accounts to be audited by one or more auditors who shall examine the same and report thereon to the board of directors.

SEC. 206. The Corporation shall make, print, and make public an annual report of its operations during each year, send a copy thereof, together with a copy of the account and balance sheet and auditor's report, to the Commission and to both Houses of Congress, and provide one copy of such report but not more than one on the application of any person and on receipt of a sum not exceeding $1: *Provided*, That the board of directors in its discretion may distribute copies gratuitously.

SEC. 207. The Corporation may in its discretion levy charges, assessed on a pro rata basis, on the holders of foreign securities deposited with it: *Provided*, That any charge levied at the time of depositing securities with the Corporation shall not exceed one fifth of 1 per centum of the face value of such securities: *Provided further*, That any additional charges shall bear a close relationship to the cost of operations and negotiations including those enumerated in sections 203 and 204 and shall not exceed 1 per centum of the face value of such securities.

SEC. 208. The Corporation may receive subscriptions from any person, foundation with a public purpose, or agency of the United States Government, and such subscriptions may, in the discretion of the board of directors, be treated as loans repayable when and as the board of directors shall determine.

SEC. 209. The Reconstruction Finance Corporation is hereby authorized to loan out of its funds not to exceed $75,000 for the use of the Corporation.

SEC. 210. Notwithstanding the foregoing provisions of this title, it shall be unlawful for, and nothing in this title shall be taken or construed as permitting or authorizing, the Corporation in this title created, or any committee of said Corporation, or any person or persons acting for or representing or purporting to represent it—

(a) to claim or assert or pretend to be acting for or to represent the Department of State or the United States Government;

(b) to make any statements or representations of any kind to any foreign government or its officials or the officials of any political subdivision of any foreign government that said Corporation or any committee thereof or any individual or individuals connected therewith were speaking or acting for the said Department of State or the United States Government; or

(c) to do any act directly or indirectly which would interfere with or obstruct or hinder or which might be calculated to

obstruct, hinder or interfere with the policy or policies of the said Department of State or the Government of the United States or any pending or contemplated diplomatic negotiations, arrangements, business or exchanges between the Government of the United States or said Department of State and any foreign government or any political subdivision thereof.

SEC. 211. This title shall not take effect until the President finds that its taking effect is in the public interest and by proclamation so declares.

SEC. 212. This title may be cited as the "Corporation of Foreign Bondholders Act, 1933."

Approved May 27th 1933.

U.S. GOVERNMENT PRINTING OFFICE: 1934

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